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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 ABEL ROBINSON,

11 Plaintiff,

12 v.

13 JACKSON, et al.,

14 Defendants.

CASE NO. 3:17-CV-05794-RJB-DWC

REPORT AND RECOMMENDATION

Noting Date: December 8, 2017

15 The District Court referred this action, filed pursuant to 42 U.S.C. § 1983, to United  
16 States Magistrate Judge David W. Christel. Presently before the Court is Plaintiff Abel  
17 Robinson's "Motion to Voluntarily Dismiss Complaint/Civil Suit with Jury Trial Demand,"  
18 wherein Plaintiff requests his case be dismissed. Dkt. 11. After review of the record, the  
19 undersigned recommends this case be dismissed without prejudice pursuant to Rule 41(a)(1) of  
20 the Federal Rules of Civil Procedure.

21 **BACKGROUND**

22 On October 2, 2017, Plaintiff initiated this lawsuit. Dkt. 1. On November 6, 2017, the  
23 Court declined to serve Plaintiff's First Amended Complaint because it failed to state a claim for  
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1 which relief could be granted. Dkt. 9. The Court, however, gave Plaintiff until December 6, 2017  
2 to file an amended complaint. *Id.* On November 8, 2017, Plaintiff filed the Motion. Dkt. 11.  
3 Plaintiff's Complaint has not been served.

#### 4 **DISCUSSION**

5 Federal Rule of Civil Procedure 41 sets forth the circumstances under which an action  
6 may be dismissed. Under Rule 41(a)(1), an action may be voluntarily dismissed without  
7 prejudice by the plaintiff if the plaintiff files a notice of dismissal before the defendant files an  
8 answer or summary judgment motion and the plaintiff has not previously dismissed an action  
9 "based on or including the same claim." Fed.R.Civ.P. 41(a)(1); *Wilson v. City of San Jose*, 111  
10 F.3d 688, 692 (9th Cir. 1997). Once the defendant has responded to the complaint, the action  
11 may only be dismissed by stipulation of dismissal signed by all parties who have appeared or "by  
12 court order, on terms that the court considers proper." Fed.R.Civ.P. 41(a)(1), (2).

13 The Court has not directed service of the Complaint in this case. Therefore, Plaintiff  
14 requested the dismissal prior to any defendant filing an answer or summary judgment motion.  
15 The Court also finds Plaintiff has not previously dismissed an action based on the same claim.  
16 Therefore, Plaintiff's Motion (Dkt. 11) should be granted pursuant to Rule 41(a)(1).

#### 17 **CONCLUSION**

18 For the foregoing reasons, the Court recommends the Complaint be dismissed without  
19 prejudice and all pending motions be denied as moot.

20 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
21 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
22 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*  
23 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
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1 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
2 December 8, 2017, as noted in the caption.

3 Dated this 17th day of November, 2017.

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6 David W. Christel  
7 United States Magistrate Judge  
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